

FORTUNE OIL CO.

IBLA 82-1182

Decided March 9, 1983

82-1219

83-39 1/

Appeal from decisions of the Oregon State Office, Bureau of Land Management, rejecting oil and gas lease offers OR 26208 through OR 26210, OR 26213, and OR 26214.

Affirmed in part, set aside and remanded in part.

1. Oil and Gas Leases: Stipulations -- Rules of Practice: Appeals:  
Generally -- Rules of Practice: Appeals: Notice of Appeal

Where BLM affords an offeror a period of 30 days to execute stipulations as a condition to issuance of an oil and gas lease and states that failure to comply will result in rejection of the offer to lease, the decision is interlocutory and there is no right of appeal. The offeror may elect to comply, to comply under protest, or to let the 30-day period run without complying and appeal the resulting BLM decision rejecting the offer. In the latter case the offeror has waived the right to comply and, if the appeal is unsuccessful, the rejection is final and no additional opportunity to execute the stipulations will be granted.

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1/ The Board has consolidated these appeals sua sponte because they involve the same appellant and the same issues.

2. Federal Land Policy and Management Act of 1976: Wilderness -- Oil and Gas Leases: Applications: Generally

Action must be suspended on an oil and gas lease offer to the extent it includes lands in either a wilderness study area or an instant study area until Congressional action on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

APPEARANCES: John R. Anderson, President, Fortune Oil Company.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

On April 2, 1981, Fortune Oil Company (Fortune) filed several noncompetitive oil and gas lease offers for various lands in south central Oregon. By three separate decisions in May and June 1982 the Oregon State Office, Bureau of Land Management (BLM), notified Fortune that it was prepared to issue the leases provided that Fortune sign and return enclosed stipulations. BLM allowed Fortune 30 days from receipt of each decision to return the signed stipulations and stated that the failure to timely meet this requirement would result in rejection of its offers. The decision concluded with the statement, "This decision is not final, but is an interlocutory decision from which no appeal may be taken." Fortune nevertheless filed notices of appeal from each decision, asserting that it was adversely affected by the decisions and citing 43 CFR 4.410 as affording it a right of appeal.

BLM treated the notices of appeal as protests that it dismissed by separate decisions in July and August 1982. The decisions asserted that Fortune was incorrect in stating that the earlier decisions were adverse to

it because they took no action to terminate the applications, priorities, or interests in the mineral estate of the lands involved and therefore were not adverse. The decisions also rejected the oil and gas lease offers because the 30 days for return of the signed stipulations had passed in each case. BLM noted as well that it had required the signing of a wilderness protection stipulation and that the Board had upheld the stipulation requirement in its decision, John R. Anderson, 57 IBLA 149 (1981). A right of appeal from these decisions was afforded and Fortune timely submitted a second notice of appeal for each case.

In its statements of reasons Fortune contends that the distinction that BLM has made between its two types of decisions is self-contradictory and has no merit. Fortune argues that by including a threat of adverse action if the stipulation requirements were not met, BLM has taken action that is adverse to its interests. Fortune requests that the decisions be remanded to BLM and that the Board instruct BLM to comply with the regulations governing treatment of appeals.

[1] In a recent decision, Carl Gerard, 70 IBLA 343 (1983), the Board examined the effect on appeal rights of various types of BLM decisions. The case dealt with a decision rejecting an application subject to compliance within 30 days, but the Board also examined the opposite circumstance, a decision "holding for rejection" an offer for some identified deficiency but affording a period of time within which the deficiency might be corrected, failing in which the offer would be considered rejected without further notice. This latter situation is similar to the situation presented in this case where BLM has imposed a requirement on appellant and indicated that failure to comply within the specified time would result in rejection of its

offers. The only difference is that a decision "holding for rejection" contemplates that no further decision will issue, whereas the BLM decision in this case stated that a rejection decision would issue.

With respect to a BLM decision "holding for rejection," the Board said:

It is our view that, where such a decision clearly contemplates that rejection will occur upon the running of the prescribed period, such a decision is interlocutory. It is, in effect, an interim determination affording an applicant an opportunity to correct a perceived deficiency prior to rejection of the application. On receipt of such a decision, a party may elect to comply in the manner prescribed, comply under protest, or await the running of the identified period and appeal the final rejection. In such a case, the 30-day appeal period commences upon the expiration of the 30-day compliance period. See State of Alaska, 42 IBLA 94 (1979); State of Alaska, 41 IBLA 309 (1979). 2/

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2/ We would note that under such an analysis, by failing either to comply or to comply under protest, an applicant waives his right to comply should a subsequent appeal be determined adverse to his interests and thus his offer or application is properly rejected with finality. To the extent that Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978), implies an opposite conclusion, it is hereby prospectively overruled to the extent it is inconsistent.

70 IBLA at 346.

Thus, in a case where BLM has required execution of stipulations subject to rejection for failure to comply, a party has a choice of three courses of action that would have three different results. The party may execute and return the stipulations timely and be issued the lease. He may execute the stipulations under protest; meaning, that although he objects to the stipulations and protests their inclusion, he wants the lease regardless. In these circumstances, BLM would then be required to examine the protest and rule on it in a decision granting a right of appeal and issuing the lease. If the Board's decision were adverse, the party's lease would stand

as issued. A party's third choice would be not to comply, await receipt of a rejection of his offer and then appeal to this Board. He would take this course where he did not want the lease if the stipulations were attached, since he would have waived his right to comply. No additional opportunity to accept the stipulations would be granted if the party lost on appeal to the Board.

We conclude that BLM properly characterized its decision as interlocutory and properly treated appellant's initial appeals as protests, even though not accompanied by the stipulations. Since the Board has not previously delineated the choices available to a party in these circumstances, we will not hold appellant to have waived his right to comply in this case.

[2] The stipulation in question in these cases provides for the interim protection of the wilderness values of the lands being inventoried and evaluated for their wilderness potential under section 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976). As BLM noted in its decision, and appellant is well aware, the Board has consistently upheld the reasonableness of the wilderness protection stipulation as properly required in furtherance of the Secretary's obligation under 43 U.S.C. § 1782(c) "to manage such lands \* \* \* in a manner so as not to impair the suitability of such areas for preservation as wilderness." Ida Lee Anderson, 67 IBLA 340 (1982); Banner Oil & Gas, Ltd., 63 IBLA 23 (1982); John R. Anderson, *supra*.

In these cases, however, appellant does not appear to be objecting to the stipulation itself but the fact that BLM has not expressly identified the areas affected by the stipulation. In statements of reasons filed with

the Board in connection with appellant's initial appeals, which BLM treated as protests, appellant notes that the stipulation begins: "By accepting this lease, the lessee acknowledges that the following described lands are being inventoried or evaluated for their wilderness potential," and concludes: "In order to expedite leasing, the exact areas involved have not been delineated [sic], they may be ascertained from the attached map or the BLM district office having jurisdiction over the area." Appellant argues that the attached map is of such small scale that it cannot be determined which lands are definitely affected by the wilderness protection stipulation and that it should not have to make a decision whether to accept or reject the lease without knowing the exact areas involved. Appellant urged that BLM be directed to describe the lands affected by the stipulations by appropriate legal subdivision.

We agree that appellant has a right to know exactly which lands are covered by a wilderness stipulation. The maps referenced in the wilderness stipulations are not included in any of the lease files before us, but review of the files for lease offers OR 26208 and OR 26210 reveals a list by legal subdivision of the areas needing wilderness protection prepared during BLM's evaluation of these lease offers. We can think of no reason why it would be any more difficult for BLM to prepare such a listing for attachment to the stipulation than to prepare a map of the areas. We note that other BLM state offices apparently provide a specific listing. E.g., Banner Oil & Gas, Ltd., supra at 23 n.1. Furthermore, although a map may reasonably show the covered areas if they are whole sections or regular subdivisions of a section, wilderness study area boundaries are often irregular and a small scale map could not easily set apart the lands encompassed by the stipulation so that the offeror would know which lands in his lease are affected.

Ordinarily in these circumstances we would set aside BLM's rejection of the lease offers and afford appellant a period of time to execute the stipulations. However, on December 30, 1982, the Secretary of the Interior announced that the Department would issue no leases in either designated wilderness areas or in wilderness study areas. Pursuant thereto, the Director, BLM, has issued Instruction Memorandum No. 83-237 (Jan. 7, 1983). In relevant part this provides that "leases currently in process should not be issued. \* \* \* All such applications are to be maintained as pending until further notice." Therefore, in accordance with the instruction memorandum, the State Office is directed to suspend further action on appellant's lease offers, to the extent that they embrace lands in a wilderness study area, and to hold them "pending with priority as of the date of filing until Congressional action is taken on the President's recommendation," and to issue leases for the lands not in the wilderness study area, all else being regular.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Oregon State Office is affirmed in part and set aside and remanded for action consistent with this decision.

Will A. Irwin  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Gail M. Frazier  
Administrative Judge

